IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6829 OF 2004

Shri.Balasaheb Yashwant Jadhav ...Petitioner

Versus

Shri.Bhupal Dattatraya Chawan & Ors....Respondents

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Mr.P.S.Dani for Petitioner.

Mr.P.D.Dalvi for Respondents.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 26, 2004.

P.C.

1. Heard Counsel appearing for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Dalvi waives notice for Respondents.

3. As short question is involved, the matter is heard for final disposal forthwith, by consent.

4. The Petitioner instituted Suit before the

Court of 4th Joint Civil Judge, Senior Division, Kolhapur being Regular Case No.484 of 2003. During the pendency of the Suit, Petitioner prayed for interim relief of injunction against the Respondents from obstructing his possession over the suit property. That application was allowed by the Trial Court by decision dated July 5, 2003. The Trial Court has addressed itself to all the three issues which are necessary for granting or non-granting relief of injunction namely; prima facie case, balance of convenience, and irreparable loss. All the three issues have been answered in favour of the Petitioner. Against this decision, appeal was carried before the District Court at Kolhapur. The appeal preferred by the Respondents, has been allowed by the impugned Judgment and Order dated July 14, 2004. On reading the Judgment under appeal, I have no hesitation in taking the view that the same is not only cryptic, but unintelligible. It is well settled that before granting or refusing to grant interim injunction, the Court has to address itself to the three issues as has been considered by the Trial Court. That has not been done by the Appellate Court.

Moreover, the Appellate Court has not reversed the finding reached by the Trial Court on the said issues, whereas, the only reasoning that weighed with the Appellate Court can be discerned from Paragraph 10 of the impugned Judgment. To my mind, the Appellate Court has committed manifest error in reversing the decision of the Trial Court, without recording any proper reasons for upsetting the finding reached by the Trial Court, nor the Appellate Court has addressed to the three issues which are necessary for refusing to grant interim relief, except to observe that the record maintained in the City Survey Office and the Corporation is inconsistent. The nature of inconsistency is not highlighted. I am not amplifying on the reasons recorded by the Appellate Court because I am inclined to set aside the impugned order and relegate the parties to the Appellate Court, which in turn, will decide the appeal on its own merits in accordance with law, without being influenced by the observations made in the impugned decision.

5. The appeal be finally disposed of as

expeditiously as possible, preferably within six months from the receipt of writ of this Court.

6. Till the appeal is disposed of, parties will maintain status-quo as of today or till such time, as the Appellate Court may pass appropriate orders on an application filed by the parties for such relief.

7. Petition allowed on the above terms. No order as to costs.

A.M.KHANWILKAR, J.